

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-01789-smb

4 - - - - - x

5 In the Matter of:

6

7 BERNARD L. MADOFF INVESTMENT SECURITIES, LLC,

8

9 Debtor.

10 - - - - - x

11 Adv. Case No. 10-04889-smb

12 - - - - - x

13 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

14 MADOFF INVESTMENT SECURITIES LLC,

15 Plaintiff,

16 v.

17 THE, ESTATE OF ROBERT SHERVYN,

18 Defendants.

19 - - - - - x

20

21

22

23

24

25

1 - - - - - x

2 Adv. Case No. 10-04357-smb

3 - - - - - x

4 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

5 MADOFF INVESTMENT SECURITIES LLC,

6 Plaintiff,

7 v.

8 GREIFF,

9 Defendants.

10 - - - - - x

11 Adv. Case No. 10-04390-smb

12 - - - - - x

13 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

14 MADOFF INVESTMENT SECURITIES LLC,

15 Plaintiff,

16 v.

17 BAM L.P., ET AL,

18 Defendants.

19 - - - - - x

20

21

22

23

24

25

1 - - - - - x

2 Adv. Case No. 10-04438-smb

3 - - - - - x

4 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

5 MADOFF INVESTMENT SECURITIES LLC,

6 Plaintiff,

7 v.

8 ESTATE OF SEYMOUR EPSTEIN ET AL,

9 Defendants.

10 - - - - - x

11 Adv. Case No. 10-04749-smb

12 - - - - - x

13 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

14 MADOFF INVESTMENT SECURITIES LLC,

15 Plaintiff,

16 v.

17 PALMEDO,

18 Defendants.

19 - - - - - x

20 United States Bankruptcy Court

21 One Bowling Green

22 New York, NY 10004

23

24 July 29, 2020

25 10:00 AM

1 B E F O R E :

2 HON STUART M. BERNSTEIN

3 U.S. BANKRUPTCY JUDGE

4

5 ECRO: UNKNOWN

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 HEARING re 08-01789-smb - Securities Investor Protection
2 Corporation v. Bernard L. Madoff Investment Securities, LLC.
3 et al

4 Conference on Letter of Baker & Hostetler dated March 5,
5 2020 re Mediation

6
7 HEARING re 10-04889-smb - Irving H. Picard, Trustee for the
8 Liquidation v. The Estate of Robert Shervyn
9 Status Conference

10
11 HEARING re 10-04357-smb - Irving H. Picard, Trustee for the
12 Liquidation of B v. Greiff
13 Final Pre-Trial Conference

14
15 HEARING re 10-04390-smb - Irving H. Picard, Trustee for the
16 Liquidation of B v. Bam L.P., et al
17 Final Pre-Trial Conference

18
19 HEARING re 10-04438-smb - Irving H. Picard, Trustee for the
20 Liquidation of B v. Estate of Seymour Epstein et al
21 Pre-Motion Conference

22
23
24
25

1 HEARING re 10-04749-smb - Irving H. Picard, Trustee for the
2 Liquidation of B v. Palmedo
3 Pre-Motion Conference
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 BAKER HOSTETLER LLP

4 Attorneys for Trustee Irving Picard

5 45 Rockefeller Plaza

6 New York, NY 10111

7

8 BY: NICHOLAS CREMONA (TELEPHONICALLY)

9 LAN HOANG (TELEPHONICALLY)

10

11 DENTONS

12 Attorney for James Greiff, BAM L.P., Michael Mann and

13 Meryln Mann

14 1221 Avenue of the Americas

15 New York, NJ 10020

16

17 BY: CAROLE NEVILLE (TELEPHONICALLY)

18 ARTHUR RUEGGER (TELEPHONICALLY)

19

20 LAX & NEVILLE LLP

21 Attorney for Lanny Rose

22 350 Fifth Avenue

23 New York, NY 10118

24

25 BY: BRIAN NEVILLE (TELEPHONICALLY)

1 CHAITMAN LLP

2 Attorney for Philip F. Palmedo

3 465 Park Avenue

4 New York, NY 10022

5

6 BY: LANCE GOTTHOFFER (TELEPHONICALLY)

7 HELEN CHAITMAN (TELEPHONICALLY)

8

9 ALSO PRESENT TELEPHONICALLY:

10

11 DAVID SHEEHAN

12 KEVIN BELL

13 ALIX BROZMAN

14

15

16

17

18

19 P R O C E E D I N G S

20 THE COURT: This is Judge Bernstein. Mike, would
21 you start the recorder, please?

22 MIKE: Yes, Judge, the recorder is on.

23 THE COURT: All right. Thank you. We have all
24 Madoff matters on today. Why don't we begin with Epstein
25 and Palmedo? They seem to raise the same issue.

1 MR. CREMONA: Good morning, Your Honor. Nicholas
2 Cremona, appearing on behalf of Irving Picard, a SIPA
3 Trustee. With me this morning is my colleague Lan Hoang,
4 also appearing on behalf of the Trustee.

5 MR. CONTE: Good morning. Your Honor noted the
6 Epstein and Palmedo cases that are before you for Rule 7056
7 conferences. The Trustee has requested leave to file
8 motions for summary judgment. In both of these cases, the
9 Defendants previously filed identical motions to withdraw
10 the reference, arguing that this Court lacked equitable
11 jurisdiction to determine the Trustee's claims because the
12 Defendants maintain their right to a jury trial.

13 The Palmedo case was referred to Judge Gardephe
14 and the Epstein case was referred to Judge Woods. In both
15 cases, the Trustee indicated his consent to the withdrawal
16 of the reference on the basis that neither Defendant filed a
17 customer claim, and the parties agreed to proceed on summary
18 judgment before the District Court.

19 Notwithstanding the parties' consensual approach,
20 starting with Judge Woods on June 8th, he issued an
21 (indiscernible) consenting to withdraw the reference, and
22 instead referred the Epstein action to Your Honor for
23 proposed findings of fact and conclusions of law on the
24 Trustee's anticipated motion for summary judgment.

25 Similarly, Judge Gardephe entered an order on July

1 8th denying the motion to withdraw as premature, finding
2 that the case was not trial ready, given the Trustee's
3 motion for summary judgment. Judge Gardephe, like Judge
4 Woods, referred the Palmetto action to this Court for
5 proposed findings of fact and conclusions of law on the
6 anticipated motion there.

7 I think it's also important to note for Your Honor
8 that both Judges noted that the Bankruptcy Court's
9 resolution of any motion for summary judgment would be very
10 useful to the District Court. Notwithstanding these clear
11 directives from the District Court and the existence of
12 these final orders, on July 22nd the Defendants filed
13 letters with Judges Gardephe and Woods seeking permission to
14 file motions to dismiss for lack of subject matter
15 jurisdiction.

16 Judge Gardephe quickly denied the Palmedo
17 Defendant's request by an order the next day, finding, based
18 on precedent in this district, that the Bankruptcy Court is
19 best suited to decide any motion to dismiss for lack of
20 subject matter jurisdiction. Judge Woods has scheduled a
21 pre-motion conference in the Epstein case, which is actually
22 set for 1:00 PM today.

23 However, given the clear precedence supporting
24 Your Honor's authority to determine any motion on subject
25 matter jurisdiction in the first instance, and the fact that

1 Your Honor already has decided such a motion and denied a
2 post-trial motion to dismiss in the Nelson case, finding
3 that the Court has subject matter jurisdictions for the
4 reasons stated therein; and given the directives set forth
5 in these final orders from the District Court, the Trustee
6 submits that leave should be granted and we should move
7 toward establishing a briefing schedule for these summary
8 judgment motions.

9 THE COURT: Thank you. Ms. Chaitman?

10 MR. GOTTHOFFER: Judge, this is Lance Gotthoffer,
11 from Chaitman, LLP.

12 THE COURT: Okay.

13 MR. GOTTHOFFER: Ms. Chaitman has a medical
14 emergency --

15 THE COURT: Okay.

16 MR. GOTTHOFFER: -- and cannot be on the call
17 today. She may have to have immediate surgery. So I'm
18 substituting for her, though I'm quite unfamiliar with the
19 cases. If Your Honor is going to set a briefing schedule,
20 then I'd ask for a particular time to respond. But
21 otherwise, I have nothing to add.

22 THE COURT: Mr. Cremona, is this a briefing
23 schedule to the motion for summary judgment for a separate
24 motion to dismiss, or is the motion to dismiss going to be
25 folded into the opposition to the motion for summary

1 judgment?

2 MR. CREMONA: I think it would be --

3 THE COURT: That seems to make the most sense,
4 frankly.

5 MR. CREMONA: Right. I think that it would be the
6 latter and remaining consistent with the multiple matters
7 that we have before the District Court now, and we have
8 seven active cases where we agreed to briefing schedules.
9 The way we have done it as the Trustee has filed a motion
10 for summary judgment and the Defendant has opposed it and
11 then filed a cross-motion to dismiss for lack of subject
12 matter jurisdiction.

13 So I would propose, consistent with those cases in
14 the District Court, proposing identical schedules here, and
15 I'm prepared to recite those, consistent with what we've
16 done in the District Court. And then we can always work
17 with Ms. Chaitman to reduce those to scheduling orders.

18 THE COURT: Oh, what do you propose?

19 MR. CREMONA: So in the first case, I would take
20 Palmedo first. The Trustee would move for summary judgment
21 on or before August 28th, which is 30 days from today. The
22 Defendants could then oppose and/or file their cross-motion
23 to dismiss on October 2nd, and the Trustee would reply and
24 oppose the cross-motions on October 23rd, and then the
25 Defendants' reply would be due on October 30th.

1 And again, just for Mr. Gotthoffer's edification,
2 this is consistent with the timetable we've agreed to in
3 seven other cases --

4 THE COURT: Uh-huh.

5 MR. CREMONA: -- before the Court.

6 MR. GOTTHOFFER: This is Lance Gotthoffer. Ms.
7 Chaitman had asked that our opposition be due October 30th,
8 just in light of the heavy briefing schedule that exists in
9 the District Courts.

10 THE COURT: That's two months after the motion to
11 dismiss?

12 MR. GOTTHOFFER: Unless they'd like to make the
13 motion to dismiss somewhat later, yes.

14 THE COURT: Why do you need two months?

15 MR. GOTTHOFFER: Because my understanding --

16 THE COURT: It's the same issue in every case,
17 probably, I'm assuming.

18 MR. GOTTHOFFER: As I understand it, it's due to
19 the briefing schedules that exist in the District Courts.
20 There's just so much time and so many people that you can
21 put on motions, so Ms. Chaitman --

22 THE COURT: Mm hmm.

23 MR. GOTTHOFFER: -- asked for October 30th.

24 MR. CREMONA: Well, Your Honor, I --

25 THE COURT: How many motions -- what's going on in

1 District Court? I mean, I know it's going on before me, but
2 how many motions for summary judgment are pending in the
3 District Court, aside from Palmedo and Epstein?

4 MR. CREMONA: Sure, Your Honor. And by way of
5 background, that's what I touched on before. We currently
6 have seven active cases where we've agreed to the withdrawal
7 of the reference because no claim was filed, and we agreed
8 to briefing schedules which were accepted by the various
9 judges that were pending before.

10 So what I just presented to Your Honor is entirely
11 consistent with what we've agreed to there. And in fact,
12 we've taken into account the existing briefing schedules and
13 staggered these cases so as not to overlap.

14 THE COURT: Mm hmm.

15 MR. CREMONA: So this is entirely consistent with
16 what we're doing before the District Court and we are not
17 duplicating or overlapping the schedules, as I mentioned.
18 And I would do the same for Epstein, which I would propose
19 to stagger by a week. And this is consistent with what
20 we've done, as I said, in the District Court. The Trustee
21 has always had afforded six weeks to file the motion, and
22 then the Defendants have asked for five weeks to oppose or
23 cross-move, three weeks on reply, et cetera. And that's
24 exactly what we did here.

25 THE COURT: Mm hmm. These other motions that are

1 pending in the District Court, have they been -- of any of
2 the District Court judges referred those motions to me as in
3 Epstein and Palmedo?

4 MR. CREMONA: The only two are Epstein and
5 Palmedo. The other District Court judges have accepted the
6 briefing schedule and the consent to proceed there.

7 THE COURT: Mm hmm.

8 MR. CREMONA: Judge Woods and Judge Gardephe took
9 a different approach.

10 THE COURT: Okay. All right, well, if the
11 briefing schedules are staggered and that's what it was
12 agreed to in the District Court, I have no problem with the
13 briefing schedules. As I said, Mr. Gotthoffer, the legal
14 issues are the same in every one of these cases. The facts
15 may vary a little bit, depending on the case, but on the
16 whole, these are good-faith cases and the facts are pretty
17 similar. Some of the defenses that have been raised have
18 been resolved or may be resolved by the Second Circuit soon.
19 So I see no reason why you can't conform to the briefing
20 schedule.

21 So what I will ask you to do, Mr. Cremona, is to
22 submit a scheduling order in each case, each of the two
23 cases, and provided that the failure to comply with the
24 schedules may result in sanctions, including the entry of
25 judgment against the disobedient party. Okay?

1 MR. CREMONA: Understood. We will do that, Your
2 Honor.

3 THE COURT: All right. I think that takes care of
4 everything you're here for, Mr. Gotthoffer. So if you want
5 to, you're excused.

6 MR. GOTTHOFFER: Thank you, Your Honor. Thank you
7 for --

8 THE COURT: Please ask -- wish Ms. Chaitman well.

9 MR. GOTTHOFFER: I shall.

10 MR. CREMONA: Your Honor, if I -- I apologize for
11 interjecting, but we do have one other matter that
12 implicates the Chaitman --

13 THE COURT: Oh.

14 MR. CREMONA: -- which is the status conference.

15 THE COURT: Oh, yes, yes, yes. Don't -- okay,
16 that's the Meisels?

17 MR. CREMONA: It's actually the mediation status
18 conference.

19 THE COURT: Oh, okay.

20 MR. CREMONA: And I'm happy to go --

21 THE COURT: Let me just go through... Yeah,
22 Meisel was resolved, as I take it, right?

23 MR. CREMONA: That's correct. And that's part of
24 the update on the mediations, and I can run through that.

25 THE COURT: Go ahead.

1 MR. CREMONA: So as Your Honor may recall, we were
2 before the court on May 28th and discussed agreed-upon
3 protocols with the -- and the parties established to conduct
4 mediations in the remaining 60 adversary proceedings with
5 the Chaitman LLP firm. We agreed to prioritize the cases
6 and proceed to mediation before Judge Hurkin-Torres, to the
7 extent that his schedule permitted.

8 Your Honor so ordered that hearing transcript to
9 reflect those agreed-upon procedures and the parties began
10 mediating the cases on a weekly basis, starting June 25th.
11 And we've actually already conducted five mediation sessions
12 with the Judge, using a secure Zoom platform. We have
13 another one scheduled for tomorrow.

14 I'm pleased to report that the parties have
15 successfully resolved three of the five cases that we've
16 mediated. Your Honor already pointed out the Meisels case,
17 which we reached a settlement in principle. And the parties
18 have agreed to document the settlement and make the final
19 payment there within the next 10 days.

20 And Your Honor is also seen stipulations and
21 entered orders regarding two other cases, the Hirsch case,
22 which is 10-4740, and the Castelli case, which is Adversary
23 Proceeding 10-4956, that have already been resolved and
24 dismissed by Your Honor.

25 So by all accounts, these mediations have been

1 very successful, and we remain hopeful that, you know, they
2 will continue to be productive and be able to move forward
3 before Judge Hurkin-Torres to the extent that his schedule
4 permits.

5 So, unless Your Honor has any questions, I would
6 suggest that we carry this over for a period of a couple of
7 months and report back, perhaps, at the October omnibus
8 hearing date.

9 THE COURT: That is fine. What is the October
10 date? Or do you have a date?

11 MR. CREMONA: We do have a date. Unfortunately, I
12 do not recall -- I don't know offhand.

13 THE COURT: Mike, do you know offhand what the
14 October date is? All right, we'll look it up and we'll --

15 MIKE: Judge?

16 THE COURT: Yeah, go ahead.

17 MIKE: The October date would be Wednesday,
18 October 28th.

19 THE COURT: 28th at 10:00. Okay. All right.

20 Thank you very much. I guess, Mr. Gotthoffer, now you can
21 really go if you want.

22 MR. GOTTHOFFER: All right, Your Honor. Thank you
23 very much.

24 THE COURT: Okay. Thank you. All right. Now,
25 next is Bam.

1 MR. CREMONA: Yes, Your Honor. We have a follow-
2 up pretrial conference, which is a continuation of our July
3 9th conference, wherein Your Honor directed the parties to
4 submit a revised joint pretrial order. And consistent with
5 that direction, as Your Honor may have seen, we submitted
6 last night a revised version of that order, which
7 incorporates the Defendants' contentions and a revised list
8 of exhibits and the objections --

9 THE COURT: Mm hmm.

10 MR. CREMONA: -- from the Defendants of the
11 Trustee's list of exhibits. The Trustee has incorporated
12 the stipulations and objections to the additional exhibits
13 identified by the Defendants. And as we indicated in that
14 correspondence last night, the proposed joint pretrial order
15 was provided to the Defendants, but we have not yet received
16 permission to execute it on their behalf.

17 From the Trustee's perspective, this is a final
18 joint pretrial order and we are prepared to move forward
19 with trial during the week of September 14, as we previously
20 discussed, using the secure Veritext Zoom platform that
21 we've been discussing with Your Honor.

22 THE COURT: Okay. Ms. Neville -- or Mr. Ruegger?

23 MR. RUEGGER: Good morning, Your Honor. This is
24 Arthur Ruegger, along with Carole Neville, on behalf of the
25 Defendants. We're very close in terms of the pretrial

1 order, Judge. There's one last issue that Ms. Neville and I
2 need to discuss and raise with Trustee's counsel. We think
3 it can be resolved in the next few days, at which point --

4 THE COURT: What is it?

5 MR. RUEGGER: However, it's -- it relates to the
6 foundation for some of the evidence related to the
7 prejudgment interest issue, Judge. In our contentions we
8 submitted some of the -- a chart of the taxes paid by the
9 Defendants --

10 THE COURT: Mm hmm.

11 MR. RUEGGER: -- that we think relate to the
12 equities of the parties. And we wanted to discuss what kind
13 of foundation we need for those. Ms. Neville and I have not
14 had a chance to try to narrow it as best we can before we
15 raise it with the Trustee. But it's really just related to
16 that chart and our prejudgment interest contentions. And
17 otherwise, we are ready to go on the pretrial order, Judge.

18 THE COURT: I -- I thought that you were going to
19 make the record and make a representation, or the accountant
20 was going to make a representation regarding the amount of
21 taxes attributable to what we've been calling the fictitious
22 profits, right?

23 MR. RUEGGER: Yes, Your Honor. That related to
24 our offer of the accountant related to the value issues,
25 that Your Honor granted the motion in limine, excluding that

1 testimony. This relates to --

2 THE COURT: I said you could -- yeah.

3 MR. RUEGGER: I'm sorry.

4 THE COURT: I said you could -- it was irrelevant
5 to, I guess, an offset of damages. First of all, you can
6 certainly make that record to preserve it. I just don't
7 need to hear testimony on it because I think it's
8 irrelevant. If you're saying now there is relevance on the
9 issue, I do have to decide, because it relates to the amount
10 of interest --

11 MR. RUEGGER: It does. It relates to the
12 prejudgment interest issue. Yes, Judge.

13 THE COURT: Okay. But you're not going to call
14 the accountant for that?

15 MR. RUEGGER: Ms. Neville and I need to talk first
16 with the Trustee, whether we need to do that. We'd prefer -
17 - hopefully, want to avoid --

18 THE COURT: Mm hmm.

19 MR. RUEGGER: -- having to call the accountant.
20 It's really just as a foundation for the taxes.

21 THE COURT: Is there a dispute -- I guess I'll ask
22 Mr. Cremona. Is there a dispute regarding the amount of
23 taxes that the Defendants paid that are attributable to the
24 fictitious profits?

25 MR. CREMONA: Your Honor, as I sit here right now,

1 I do not believe that there is. I would like to understand
2 what Mr. Ruegger intends to present, but I do not believe
3 there is a dispute, based on my understanding right now.

4 THE COURT: Because if there's no dispute, you can
5 just include it as a stipulated fact. Do you need anything
6 more than that, Mr. Ruegger?

7 MR. RUEGGER: I don't believe so, unless Ms.
8 Neville corrects me.

9 THE COURT: You just want --

10 MS. NEVILLE: No, I think that's sufficient, Your
11 Honor. This is Carole Neville.

12 THE COURT: Yes. Look, why don't I do this? I'll
13 give you one week, adjourn this for a week. I hate to keep
14 making you come back, but I'd rather have a signed pretrial
15 order by both parties, although I am prepared to sign this
16 order in a week if nothing can be resolved. And then you'll
17 just list your accountant as a witness and, you know, you
18 can call him to testify about the amount of taxes. Not as
19 an offset to damages, but on -- you know, because it's
20 relevant or arguably relevant to the issue of the equities
21 in the interest rate.

22 MR. RUEGGER: Very well, Your Honor. Thank you.

23 MS. NEVILLE: Your Honor --

24 THE COURT: Yeah.

25 MS. NEVILLE: This is Carole Neville. If we

1 resolve this with the Trustee and gather stipulated facts,
2 can we call off the hearing for next week?

3 THE COURT: Yeah, sure. I mean, if everybody is
4 satisfied and you write me a letter, either Mr. Cremona or
5 you, with the consent of the other parties saying here's the
6 final pretrial order, we've signed it, we agree to it,
7 that's all you really have to do.

8 MS. NEVILLE: Okay.

9 THE COURT: And then we'll just fix a trial date.

10 MS. NEVILLE: Your Honor, may I clarify one thing?
11 Are you presiding over the remainder of the Madoff cases?

12 THE COURT: I am still presiding over the Madoff
13 cases. I'm not sure if I'm going to try this particular
14 one. But I'm still here, Ms. Neville, for better or worse.

15 MS. NEVILLE: I know you are. But it makes a
16 difference to some degree in how you prepare for these
17 things. So that's why I asked.

18 THE COURT: It shouldn't.

19 MS. NEVILLE: I apologize.

20 THE COURT: It shouldn't.

21 MS. NEVILLE: Well, Judge.

22 THE COURT: Every case is separate. You have to
23 make your record. By the way, what's next Wednesday? Or do
24 -- let me -- before I say that, Mike, do we have a Madoff
25 calendar next Wednesday?

1 MIKE: Oh, we don't, Judge. But --

2 THE COURT: Okay.

3 MIKE: (indiscernible).

4 THE COURT: I'll put this on --

5 MIKE: Tuesday --

6 THE COURT: I'll put it on Tuesday.

7 MIKE: Tuesday the 4th.

8 THE COURT: Okay.

9 MIKE: Judge, it's --

10 THE COURT: That's next Tuesday at -- yes, Mike?

11 MIKE: It would be Tuesday, August 4th at 10:00
12 AM.

13 THE COURT: Okay. So I'll adjourn this final
14 pretrial conference to August 4th at 10:00 AM. If you can
15 work out the issues and send me, you know, what is
16 essentially a consent joint pretrial order that I can sign,
17 then I'll call off the conference. Okay?

18 MR. CREMONA: Yes, Your Honor. Thank you. I
19 would just -- I'm confident that we should be able to
20 resolve the issue. It was just that this is the first time
21 it's been raised with us today. So --

22 THE COURT: Okay.

23 MR. CREMONA: -- we'll be able to get there.

24 THE COURT: All right. As I said, if there's no
25 dispute, you can just include it as a stipulated fact.

1 Okay. Next, I have Greiff?

2 MR. CREMONA: Yes, Your Honor. So the final
3 matter on the agenda is the pretrial conference in Greiff,
4 which is 10-4357. The parties were previously before Your
5 Honor for a pretrial conference held on February 20th. And
6 Your Honor previously set the matter for trial to begin on
7 April 7th. On March 4th, Defendant filed a motion to
8 withdraw the reference, arguing that the Court lacked
9 equitable jurisdiction. And the Defendant also filed an
10 emergency motion to stay the trial, which was heard by Your
11 Honor, and you reserved decision back on March 18.

12 In the meantime, on June 4th Judge Schofield
13 issued her decision denying the motion to withdraw the
14 reference. So there is no longer any impediment to trial
15 here. And I would submit that the motion for a stay is now
16 moot and the Trustee has --

17 THE COURT: Mm hmm.

18 MR. CREMONA: -- as a result consulted his
19 experts, and we're prepared to move forward with trial in
20 this matter in the same manner we are in Mann, remotely
21 using the secure Zoom platform through Veritext, which I
22 understand is the Court's preferred vendor. And the Trustee
23 has dates in October that work for our experts, and we're
24 happy to present them to Your Honor for consideration.

25 THE COURT: Tell me more about the Veritext,

1 because the virtual trial orders that I've entered in other
2 cases use Zoom. What's the relationship between Zoom and
3 Veritext?

4 MR. CREMONA: I'm going to defer to my colleague,
5 Ms. Hoang, on this, as she has greater --

6 THE COURT: Okay.

7 MS. HOANG: Good morning, Your Honor. Lan Hoang.

8 THE COURT: Good morning.

9 MR. HOANG: Zoom is a -- Veritext uses a platform
10 that is embedded within Zoom. So --

11 THE COURT: Mm hmm.

12 MR. HOANG: -- we can provide both the testimony
13 and display the documents simultaneously for the Court,
14 pretty much as if we were in court. And they will --

15 THE COURT: Mm hmm.

16 MR. HOANG: -- provide the Court Reporters as well.

17 THE COURT: Well, who knows? Maybe you will be in
18 court in October. Although --

19 MR. HOANG: Maybe we will.

20 THE COURT: All right. Mr. Ruegger or Ms.
21 Neville?

22 MR. RUEGGER: Good morning, Your Honor. Arthur
23 Ruegger, for the Defendants, with Ms. Neville. We don't
24 have any objection to what Mr. Cremona and Ms. Hoang have
25 stated, except that we don't have a pretrial order in the

1 Greiff matter yet.

2 THE COURT: Mm hmm.

3 MR. RUEGGER: So we're happy to start on that,
4 subject to our responsibilities --

5 THE COURT: Is it going to be any different than -
6 -

7 MR. RUEGGER: -- on the Mann trial.

8 THE COURT: Is it going to be any different than
9 Bam?

10 MR. RUEGGER: It is, Your Honor. There's a --

11 THE COURT: Obviously, the documents, maybe a
12 little. Go ahead.

13 MR. RUEGGER: The documents -- but there's also --
14 I'm sorry, Your Honor. Arthur Ruegger. There is an issue
15 of fact as to what transfers were actually made.

16 THE COURT: Okay.

17 MR. RUEGGER: The Trustee claims -- that's the
18 issue of fact, the primary issue of fact that I'm aware of.

19 MR. CREMONA: Your Honor --

20 THE COURT: I assume there is the same issue with
21 whether Madoff paid the transfers personally or BLMIS, LLC
22 paid them?

23 MR. RUEGGER: Yes, Your Honor. And also the issue
24 of prejudgment interest. So, it's the Mann case, plus this
25 issue of the facts related to the transfers.

1 THE COURT: What sort of fact issues? I'm not
2 familiar with it.

3 MR. RUEGGER: There are certain transfers that are
4 claimed by the Trustee that allegedly went to the Defendant,
5 and we don't believe that there is sufficient evidence or
6 reliable evidence --

7 THE COURT: Mm hmm.

8 MR. RUEGGER: -- that those transfers were made.

9 THE COURT: Okay.

10 MR. RUEGGER: And we have some counter-evidence.

11 THE COURT: All right. So you have your documents
12 not to prepare a pretrial order? Because that was an issue
13 with Bam and your access to the office.

14 MR. RUEGGER: We do have our access to the office,
15 and we do have our documents, Your Honor. We have not yet
16 organized them, as for the pretrial order. But yes, we have
17 access to those documents.

18 THE COURT: Okay. So, Mr. Cremona, when can you
19 submit your draft, the initial draft of the joint pretrial
20 order to me?

21 MR. CREMONA: Your Honor, what I was going to
22 suggest is, since we have time and it's a bit far out for
23 October, was to do what we did in Mann and the Sage cases,
24 which is to schedule that date and then work backwards from
25 there, entering a scheduling order like we did in Mann and

1 Sage. And we can build in the dates --

2 THE COURT: Yeah.

3 MR. CREMONA: We would submit a joint --

4 THE COURT: The problem -- the issue I have, I'll
5 tell you, Mr. Cremona, is there's been a lot of back-and-
6 forth on the pretrial orders. And if I schedule a trial
7 before the pretrial order is complete, I fear that I'm going
8 to have to keep moving that trial date, because there's
9 going to be issues relating to the pretrial order, a final
10 pretrial order. I would much prefer to get the final
11 pretrial order done sooner rather than later. I guess
12 you're telling me that's a burden, or both sides are telling
13 me that the burden. And then once it's complete, schedule a
14 trial.

15 MR. CREMONA: Not at all, Your Honor. I think we
16 can certainly do that, given where we are with the same
17 counsel on virtually the same case, with some additional
18 issues. So I think we could --

19 THE COURT: Mm hmm.

20 MR. CREMONA: -- submit a joint pretrial order
21 within the next 30 days. I would hope to --

22 THE COURT: Okay. All right. Well, you're going
23 to be pretty close to your anticipated dates anyway. And
24 normally, I don't set the trial date until the final
25 pretrial conference, when I review the pretrial order.

1 Why don't we say that you will send either Mr.
2 Ruegger or Ms. Neville or both a draft of the pretrial order
3 by the end of August, I guess; August 31? I don't know if
4 that's a weekend or what, but -- how long will it take you
5 to turn that around Mr. Ruegger?

6 MR. RUEGGER: Unless Ms. Neville corrects me, I'm
7 going to say -- well, I guess we're going to be in the Mann
8 trial then in September. So, three weeks, Your Honor?
9 That'll give us a week after the Mann trial, assuming that
10 schedule holds.

11 THE COURT: All right. So that's around -- I
12 think it's around September 20. What's three weeks from
13 August -- what's September 21st? Is that a weekday? Does
14 anybody have a calendar?

15 MIKE: It is a Monday, Your Honor.

16 THE COURT: All right. So September 21 for your
17 draft, and then let's just say we'll have the final pretrial
18 conference -- let me get to September in my -- let's say
19 final pretrial conference September 29. I'll fix a trial
20 date at that point. Okay?

21 MR. CREMONA: Very well, Your Honor.

22 THE COURT: If you're having any issues with the
23 pretrial order, don't wait until September 29th to raise it
24 with me, though. Write me a letter and we'll deal with it.

25 MR. CREMONA: Understood, Your Honor.

1 THE COURT: All right. Is there anything else?
2 Mr. Cremona, have we completed the calendar? Okay. Thank
3 you very much.

4 MR. CREMONA: Thank you, Your Honor.

5 MR. RUEGGER: Thank you, Your Honor.

6 THE COURT: Okay.

7 (Whereupon these proceedings were concluded at
8 10:40 AM)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Sonya M. Ledanski Hyde". The signature is written in dark ink and is positioned above the printed name.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: July 31, 2020